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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

SONOS, INC.,

Plaintiff and Counter-
Defendant,

vs.

GOOGLE LLC,

Defendant and Counter-
Claimant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF ITS MOTION *IN LIMINE*
NO. 2 TO EXCLUDE PORTIONS OF THE
EXPERT REPORT AND CERTAIN
TESTIMONY OF MR. JAMES
MALACKOWSKI REGARDING
DAMAGES**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Google LLC (“Google”) hereby requests to file under seal portions of its Motion *in Limine* No. 2 to Exclude Portions of the Expert Report and Certain Testimony of Mr. James Malackowski Regarding Damages (“Motion *in Limine* No. 2”). Specifically, Google requests an order granting leave to file under seal the portions of the document listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Exhibit 1 to the Declaration of Lindsay Cooper in Support of Google’s Motion <i>in Limine</i> No. 2 (“Exhibit 1”)	Portions outlined in red boxes	Google
Exhibit A to the Declaration of Joseph Kolker in Support of Sonos’s Opposition to Google’s Motion <i>in Limine</i> No. 2 (“Exhibit A”)	Portions outlined in red boxes	Google

II. LEGAL STANDARD

Civil Local Rule 79-5(c) provides that a party seeking to file its own documents under seal must file an administrative motion that articulates the applicable legal standard and reasons for keeping a document under seal, includes evidentiary support from a declaration where necessary, and provides a proposed order that is narrowly tailored to seal only the sealable material.

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). In the Ninth Circuit, two different standards may apply to a request to seal a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). “To seal records in connection with a ‘dispositive’ motion or a motion that ‘more than tangentially relate[s] to the merits of a case,’ ‘compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure’ are required.” *Bronson v. Samsung Elecs. Am., Inc.*, No. C 18-02300 WHA, 2019 WL 7810811, at *1 (N.D. Cal. May 28, 2019) (quoting

1 *Kamakana*, 447 F.3d at 1178-79). “A particularized showing of ‘good cause’ under Federal Rule
 2 of Civil Procedure 26(c), however, suffices to warrant sealing in connection with a non-dispositive
 3 motion.” *Id.*

4 This Court has analyzed sealing requests in connection with motions *in limine* pursuant to
 5 the “good cause” standard for non-dispositive motions. *See, e.g., Gearsources Holdings, LLC v.*
 6 *Google LLC*, No. 18-CV-03812-HSG, 2021 WL 1123630, at *2 (N.D. Cal. Feb. 24, 2021) (“Because
 7 Defendant’s motion *in limine* is not a dispositive motion, the Court applies the lower good cause
 8 standard.”); *Racies v. Quincy Bioscience, LLC*, No. 15-CV-00292-HSG, 2019 WL 8438448, at *1
 9 (N.D. Cal. Dec. 16, 2019) (“Because the parties move to file documents related to their motions *in*
 10 *limine*, the Court will apply the lower good cause standard.”); *TVIIM, LLC v. McAfee, Inc.*, No. 13-
 11 CV-04545-HSG, 2015 WL 3776424, at *2 (N.D. Cal. June 16, 2015) (“Because motions *in limine*
 12 are nondispositive motions, the Court applies the ‘good cause’ standard to the pending motions to
 13 seal.”).

14 **III. THE COURT SHOULD SEAL GOOGLE’S CONFIDENTIAL INFORMATION**

15 Material that is confidential and could harm a litigant’s competitive standing if disclosed
 16 may be sealed under the good cause standard. *See, e.g., Skillz Platform Inc. v. AviaGames Inc.*, No.
 17 21-CV-02436-BLF, 2022 WL 875654, at *2 (N.D. Cal. Mar. 24, 2022) (finding “good cause to file
 18 the documents and portions of documents at issue under seal given the sensitive financial and
 19 business information they contain”); *Dugan v. Lloyds TSB Bank, PLC*, No. 12-CV-02549-WHA
 20 NJV, 2013 WL 1435223, at *2 (N.D. Cal. Apr. 9, 2013) (“There may be ‘good cause’ to seal records
 21 that are privileged, contain trade secrets, contain confidential research, development or commercial
 22 information, or if disclosure of the information might harm a litigant’s competitive standing.”).

23 The portions of Exhibits 1 and A outlined in red boxes contain confidential information
 24 regarding Google’s highly sensitive financial and product revenue data, such as advertising and
 25 subscription revenue, as well as figures from which a competitor could deduce Google’s highly
 26 sensitive financial and product revenue data. Public disclosure of this information would harm the
 27 Google’s competitive standing and create a risk of injury by providing competitors with access to
 28 information that Google does not have similar access to about their competitors, allowing them to

1 gain a competitive advantage in the marketplace. Declaration of Jocelyn Ma (“Ma Decl.”) ¶ 3. If
2 such information were made public, Google’s competitive standing would be significantly harmed.
3 Google has therefore designated this information as HIGHLY CONFIDENTIAL—ATTORNEYS’
4 EYES ONLY under the protective order (Dkt. 92). A less restrictive alternative than sealing these
5 portions of Exhibits 1 and A would not be sufficient because the information sought to be sealed is
6 Google’s confidential and highly sensitive financial information but has been used by Sonos in
7 support of its opposition to Google’s Motion *in Limine* No. 2. This Court has previously granted
8 sealing of the same and/or similar information. *See, e.g.*, Dkt. 334 at 4.

9 The portions of Exhibit A outlined in red boxes also contain confidential licensing
10 negotiations that are not public. Public disclosure of this information would harm Google’s
11 competitive standing and its ability to negotiate future licensing agreements by giving competitors
12 access and insight into Google’s highly confidential business thinking and asymmetrical
13 information about Google’s licensing strategies to other entities. Ma Decl. ¶ 4. If such information
14 were made public, Google’s competitive standing would be significantly harmed. Google has
15 therefore designated this information as HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
16 ONLY under the protective order (Dkt. 92). A less restrictive alternative than sealing these portions
17 of Exhibit A would not be sufficient because the information sought to be sealed is Google’s
18 confidential and highly sensitive financial information but has been used by Sonos in support of its
19 opposition to Google’s Motion *in Limine* No. 2. This Court has previously granted sealing of the
20 same and/or similar information. *See, e.g.*, Dkt. 334 at 5.

21 In addition, the portions of Exhibit A outlined in red boxes contain confidential information
22 regarding Google’s highly sensitive product usage metrics data which Google does not share
23 publicly. Public disclosure of this information could harm Google’s competitive standing and create
24 a risk of injury by providing competitors with access to information that Google does not have
25 similar access to about their competitors, and may allow competitors and/or bad actors to manipulate
26 or gain insight into how Google maintains its data. Ma Decl. ¶ 5. A less restrictive alternative than
27 sealing would not be sufficient because the information sought to be sealed is Google’s proprietary
28

1 and confidential business information but has been utilized by Sonos in support of its opposition to
2 Google's Motion *in Limine* No. 2.

3 Finally, the portion of Exhibit A outlined in red boxes on pages 98-102 also includes
4 confidential information from an internal presentations and communications regarding business and
5 product strategy. Public disclosure of this information could harm Google's competitive standing
6 and create a risk of injury by providing competitors with access to information that Google does not
7 have similar access to about their competitors. Ma Decl. ¶ 6. A less restrictive alternative than
8 sealing would not be sufficient because the information sought to be sealed is Google's proprietary
9 and confidential business information but has been utilized by Sonos in support of its opposition to
10 Google's Motion *in Limine* No. 2.

11 Google thus has good cause to keep such information under seal. *See, e.g., Arista Networks,*
12 *Inc. v. Cisco Sys., Inc.*, No. 16-cv-00923-BLF, 2018 WL 2010622, *2-3 (N.D. Cal. Apr. 30, 2018)
13 (sealing highly confidential information relating to litigant's financial information and internal
14 development strategies); *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12-CV-
15 03844-JST, 2015 WL 12976921, at *3 (N.D. Cal. Mar. 31, 2015) (granting motion to seal "sensitive
16 business information regarding the amount of royalties received under a licensing agreement and
17 also detailed information regarding a confidential licensing and manufacturing agreement" under
18 the good cause standard); *Rodman v. Safeway, Inc.*, No. 11-cv-03003-JST, 2014 WL 12787874, *2
19 (N.D. Cal. Aug. 22, 2014) (sealing "internal, nonpublic information discussing [a litigant's] pricing
20 strategy, business decisionmaking, and financial records").

21 **IV. CONCLUSION**

22 For the foregoing reasons, Google respectfully requests that the Court grant Google's
23 Administrative Motion to File Under Seal Portions of its Motion *in Limine* No. 2.

1 DATED: April 26, 2023

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

2
3 By: /s/ Sean Pak

Sean Pak

4 *Attorneys for GOOGLE LLC*

ATTESTATION

Pursuant to the Federal Rules of Civil Procedure and Local Rule 5-1, I hereby certify that, on April 26, 2023, all counsel of record who have appeared in this case are being served with a copy of the foregoing via the Court's CM/ECF system and email.

DATED: April 26, 2023

By: /s/ Sean Pak
Sean Pak